Challenges Faced By Multichannel Video Programming Distributors

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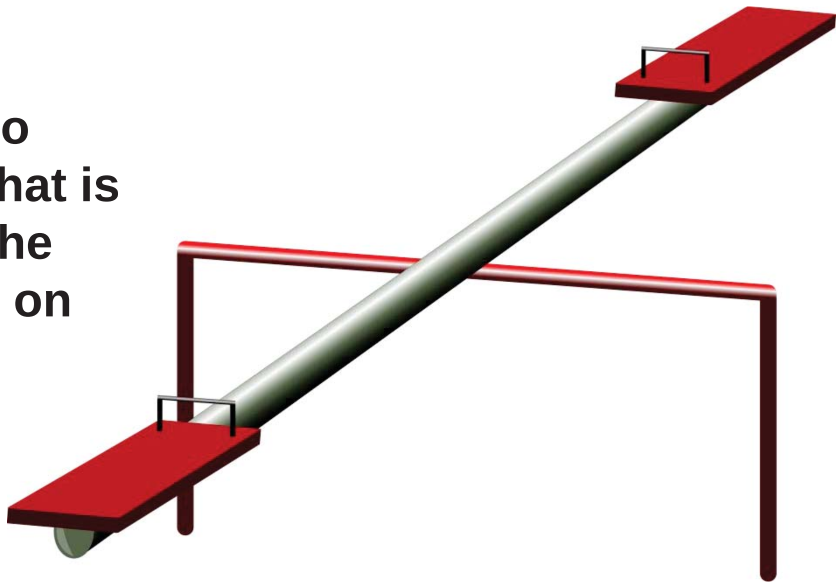
Negotiations Between MVPDs and Content Owners

MVPDs want low affiliate fees and no strings attached, that is the right to place the network anywhere on their lineup



Content owners want high affiliate fees and guarantees of broad distribution

Typical carriage contracts specify affiliate fees, carriage obligations, and other requirements.

Economics of Bundling

- Bundling is selling two or more products together instead of separately
- There are many reasons why firms – even competitive firms – find it desirable to bundle. Bundling can:
  - Be efficient for the firm (e.g. buy one get one half off)
  - Be convenient for consumers (e.g. buy a camera and get a package of film with it)
  - Allow firms to price discriminate
  - Allow firms to extend market power over one product to another more competitive product

Antitrust Rule-of-reason analysis:

Even if there is some loss of consumer choice, there may be offsetting benefits

Wholesale Bundling

- Carriage agreements often govern terms for multiple program services at the same time
  - Some agreements govern networks of greater and lesser desirability (e.g. ESPN versus ESPNU and ESPNews)
  - Some govern networks that may be equally desirable (e.g. TNT and TBS)
- Do content owners force MVPDs to distribute less-desirable networks in order to gain rights to distribute the more desirable programming?
- Even if they do, is the practice anticompetitive?

Balancing Test for Wholesale Bundling

- Do content owners have the necessary market power?
- Are there adverse effects?
- What are the procompetitive rationales?

Features of “Must-Have” Programming

- Characteristics of marquee programming:
  - Broad-based popularity, e.g. ABC
  - Core of dedicated viewers, e.g. AMC (The Walking Dead)
  - Genre leadership, e.g. Nickelodeon, ESPN
- Importance magnified by the presence of increased rivalry among content distributors competing head-to-head for the same subsribers
  - A network is “must-have” for a distributor if the permanent removal of the network from the distributor’s lineup would cause a sufficiently large number of subscribers to switch to another distributor (“Insistence”)

“Must-have” might not entail dominant market share, yet it may confer market power.

Top 50 Networks Account for 81.4% of Total Prime Time Ratings

Rank	Network	Owner	Share of Prime Time Rating	Cumulative Share
1	CBS	CBS Corp	7.8%	7.8%
2	NBC	Comcast	7.1%	14.9%
3	ABC	Walt Disney	5.8%	20.7%
4	FOX	21 Century Fox	4.7%	25.4%
5	ESPN	Walt Disney	2.8%	28.2%
6	USA	Comcast	2.3%	30.5%
7	Univision	Univision	2.2%	32.8%
8	Disney Channel	Walt Disney	2.2%	35.0%
9	TNT	Time Warner	2.2%	37.1%
10	TBS	Time Warner	2.1%	39.2%
11	FOX News	21 Century Fox	2.0%	41.2%
12	History	Walt Disney	2.0%	43.2%
13	Nickelodeon	Viacom	1.7%	44.8%
14	HGTV	Scripps	1.6%	46.4%
15	Cartoon Network	Time Warner	1.6%	48.0%
16	FX Network	21 Century Fox	1.4%	49.4%
17	A&E	Walt Disney	1.4%	50.8%
18	Discovery Channel	Discovery	1.4%	52.2%
19	The CW	CBS Corp	1.3%	53.5%
20	AMC	AMC Networks	1.3%	54.8%
21	TLC	Discovery	1.2%	56.0%
22	Hallmark Channel	Crown Media	1.2%	57.2%
23	Syfy	Comcast	1.2%	58.4%
24	Freeform	Walt Disney	1.2%	59.6%
25	Investigation Discovery	Discovery	1.2%	60.8%
26	ION	ION	1.2%	62.0%

Rank	Network	Owner	Share of Prime Time Rating	Cumulative Share
27	Food Network	Scripps	1.1%	63.2%
28	Lifetime Television	Walt Disney	1.1%	64.3%
29	Telemundo	Comcast	1.1%	65.4%
30	Bravo	Comcast	1.1%	66.5%
31	Disney Junior	Walt Disney	0.9%	67.4%
32	Spike TV	Viacom	0.9%	68.4%
33	FOX Deportes	21 Century Fox	0.9%	69.2%
34	BET	Viacom	0.8%	70.1%
35	TV Land	Viacom	0.8%	70.9%
36	MTV	Viacom	0.8%	71.7%
37	Comedy Central	Viacom	0.8%	72.5%
38	Hallmark M&M	Crown Media	0.8%	73.3%
39	VH1	Viacom	0.8%	74.1%
40	MSNBC	Comcast	0.7%	74.8%
41	Animal Planet	Discovery	0.7%	75.5%
42	truTV	Time Warner	0.7%	76.2%
43	Viceland	Walt Disney	0.7%	76.9%
44	LMN	Walt Disney	0.7%	77.6%
45	WE tv	AMC Networks	0.6%	78.2%
46	OWN	Discovery	0.6%	78.9%
47	National Geographic	21 Century Fox	0.6%	79.5%
48	CNN	Time Warner	0.6%	80.1%
49	NFL Network	NFL	0.6%	80.8%
50	E!	Comcast	0.6%	$\boxed{81.4\%}$
-	*Other Networks (67)*	-	18.6%	100.0%

Source: SNL Kagan 2016.

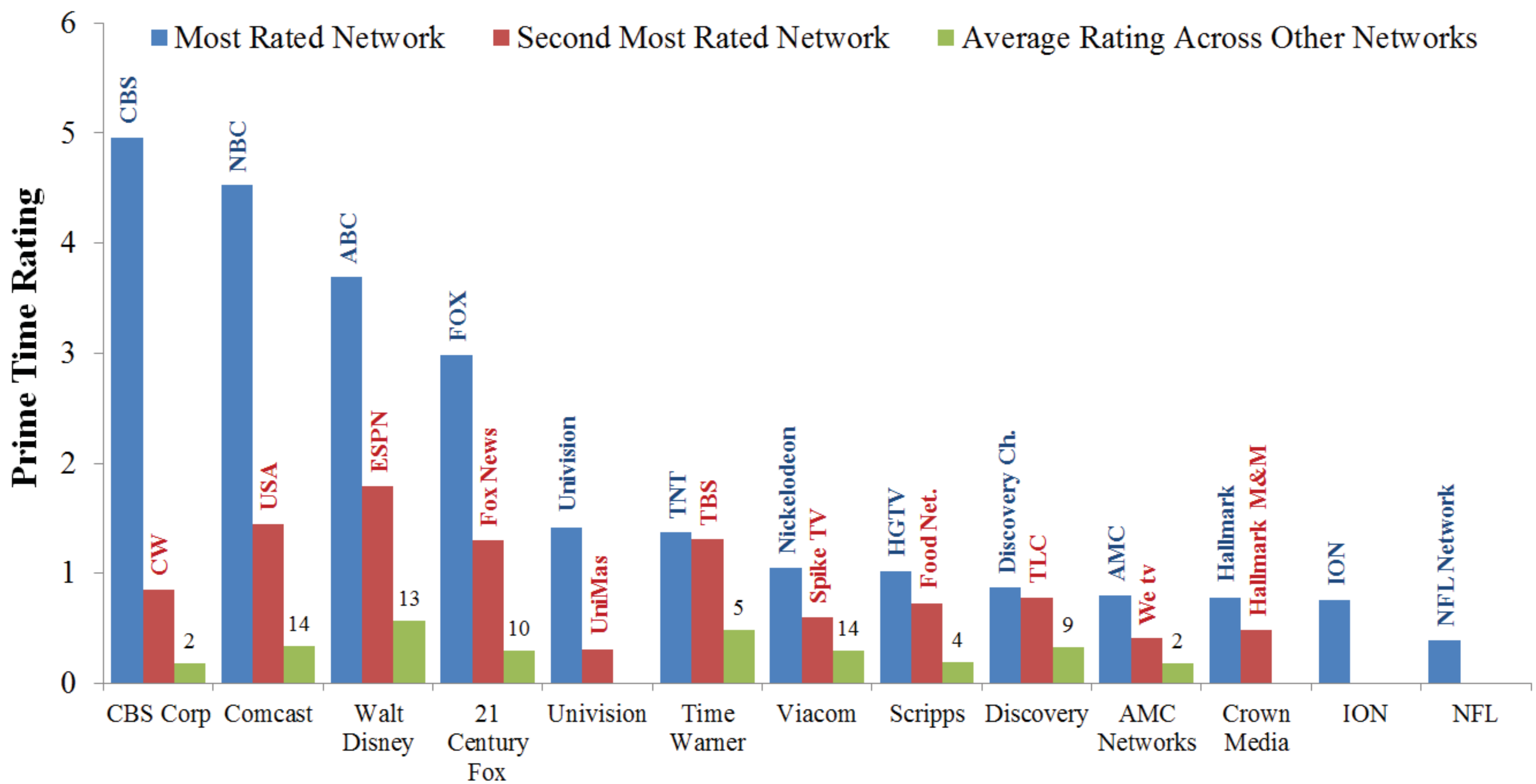
Ten Owners Account for 95% of Top-50 Networks' Ratings

Rank	Owner	Share of Top-50 Networks' Prime Time Ratings	Share of Overall Prime Time Ratings
1	Walt Disney	23.1%	18.8%
2	Comcast	17.4%	14.1%
3	21 Century Fox	11.9%	9.7%
4	CBS Corp	11.2%	9.1%
5	Time Warner	8.8%	7.1%
6	Viacom	8.2%	6.6%
7	Discovery	6.4%	5.2%
8	Scripps	3.4%	2.8%
9	Univision	2.7%	2.2%
10	Crown Media	2.5%	2.0%
	Others (3)	4.6%	3.7%

Source: SNL Kagan 2016.

Across all networks, the HHI on average primetime ratings share is 1,156, though it would be higher within certain genres (e.g. sports).

Most Viewed Network and Owner's Average Rating



Source: SNL Kagan 2016.

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Top Six Competitors Control the Majority of Viewing

- 21 Century Fox
- CBS Corporation
- Comcast
- Time Warner
- Viacom
- Walt Disney

Account for

- 77% of total cable and broadcast networks' **24-hour viewership ratings**
- 75% of total cable and broadcast networks' **prime time viewership ratings**
- 81% of industry's **affiliate and advertising revenues**

Carriage Obligations With No Other Constraints

- Contracts typically specify an affiliate fee for each network
- With only a carriage obligation and no other constraints, an MVPD is free to place the network on any tier of service (even a la carte) and pay the affiliate fee on subscribers who take the service

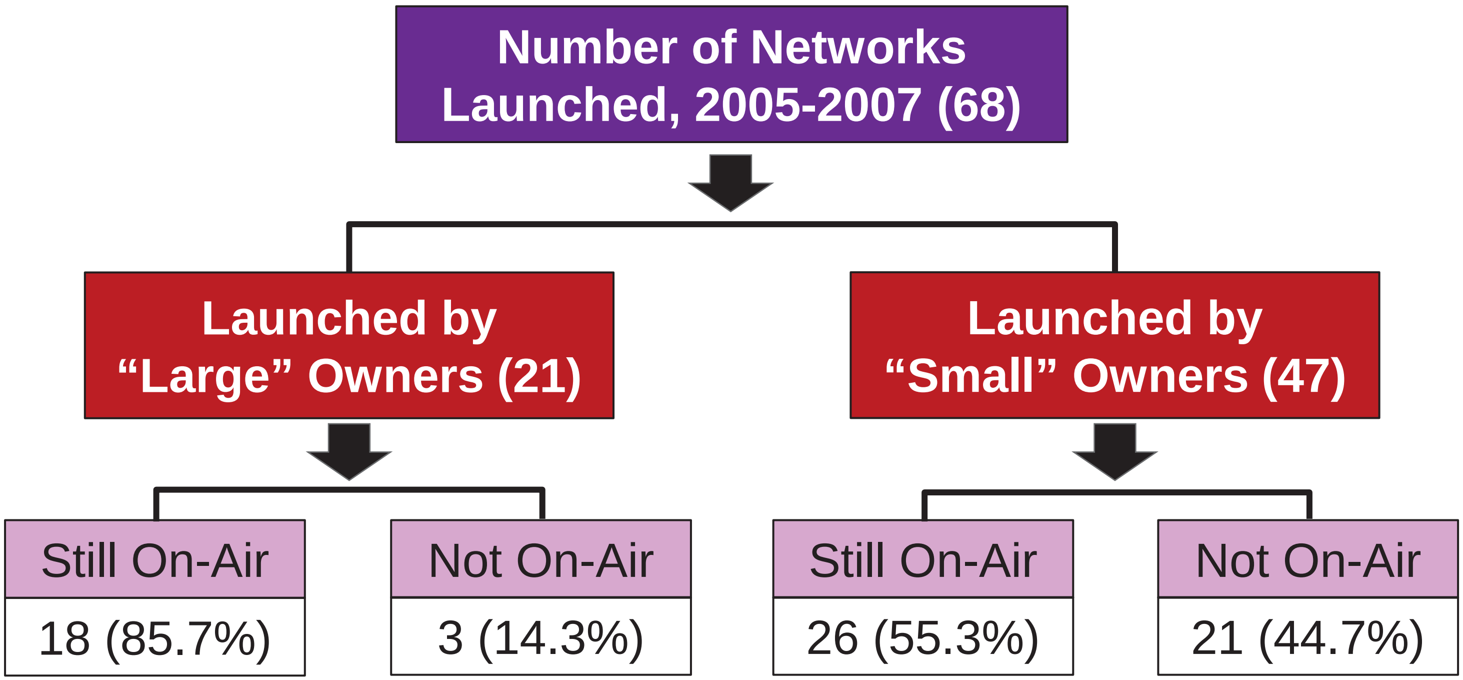
If MVPDs retain flexibility and have no capacity constraints, then such wholesale bundling is unlikely to be problematic.

Carriage Obligations with Other Constraints

- Other constraints may include tier placement requirements, subscriber or penetration commitments, channel adjacency commitments
- Carriage obligations with such constraints could lead to:
  - "Bundle bloat," i.e. excessively fat expanded basic packages
  - Increased programming costs
  - Squeezing out of programmers without marquee programming and decreased incentives for them to innovate

Such wholesale bundling could be problematic and assessing its net effect requires weighing pro and anticompetitive effects based on evidence.

Success of New Networks Launched In 2005 - 2007



Sources: SNL Kagan 2016 and FCC (2009), “Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming – 13th Report”.

Significant difference in networks’ survival rates between “Large” and “Small” content owners

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Examples of Procompetitive Rationales

- Risk sharing provides incentives to create new programming
- Proliferation of programming by existing program owners tends to create more diversity of programming
- Greater segmentation of target audiences can lead to increased advertising revenue, which in turn would place downward pressure on programming costs
- Lower transactions costs, including contracting costs and programming costs

Procompetitive factors lead to output expansion, i.e. more programming choices and lower costs.

Concluding Remarks

- As distribution has become more competitive over the past 20 years, owners of marquee programming have gained bargaining leverage
- As certain content owners have become more important to MVPDs, the potential for anticompetitive wholesale bundling has increased
- *However*:
  - There is little empirical work on what constitutes a “must-have” network, largely because most carriage disruptions are temporary so natural experiments are difficult to find
  - One must be careful not to confuse harm to competitors with harm to competition